SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

NO. [redacted] 49

ZENITH RADIO CORPORATION, A CORPORATION,
Petitioner,

vs.

HAZELTINE RESEARCH, INC., A CORPORATION, AND
HAZELTINE CORPORATION, A CORPORATION,
Respondents.

BRIEF OF HAZELTINE CORPORATION IN OPPOSITION TO THE PETITION FOR CERTIORARI

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In this brief, Hazeltine Corporation answers that part of the Petition for Writ of Certiorari of Zenith Radio Corporation (Zenith) which attacks the vacation of the two judgments as to Hazeltine Corporation.

CITATIONS TO OPINIONS BELOW

The opinion of the Court of Appeals is reported in 388 F.2d 25. We shall refer to the pages of the Opinion as reproduced at pages 60-85 of the Petition for Certiorari, and shall cite it as "Op. Pet. . . . ."

QUESTION PRESENTED

The question presented as to Hazeltine Corporation is:

Whether the Court of Appeals erred in vacating the judgments against Hazeltine Corporation since this corporation was not named as a party, not served with process, did not participate in the trial, was not brought into the law suit in any manner, and appeared specially only after trial and entry of findings and after Zenith's submission of a proposed judgment naming it, and where jurisdiction was asserted solely on the basis of a stipulation to which this corporation was not a party and which on its face did not even purport to bind this corporation.

STATEMENT OF THE CASE

The history of the litigation has been set forth in the brief of Hazeltine Research, Inc. (HRI). This brief will state only such additional facts as are relevant to the question presented as to Hazeltine Corporation.

Hazeltine Corporation is a Delaware corporation with executive offices in Little Neck, New York, and no offices, plants, or other facilities in the Northern District of Illinois (R.1063).[1] It is engaged primarily in the business of research, development, and manufacture of electronic equipment for military, air traffic control, navigation, and

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1. The following abbreviations are used in this brief:
   Pet. — Zenith's Petition.
   Op. Pet. — Decision of Court of Appeals reprinted in Zenith's Petition.
   R. — Printed record filed by HRI with the Court of Appeals.
   Z. — Printed record filed by Zenith with the Court of Appeals.

Throughout this brief, emphasis has been supplied unless the contrary is indicated.

related purposes for the United States Government and its allies (R.261, 269, 1065, 1509, 2188-94). Hazeltine Corporation does not manufacture or sell radios or television sets (R.1509, 2188-95).

Hazeltine Corporation was not a party to the original complaint which was filed by its wholly-owned corporate subsidiary, HRI, charging Zenith with patent infringement (R.1, 1065). Hazeltine Corporation was not named as a party in the counterclaim filed by Zenith against HRI (R.48). It was never served with process and did not enter an appearance or participate in the trial. Hazeltine Corporation first learned that Zenith would seek entry of judgment against it on January 26, 1965, the day following entry of the findings against HRI, when Zenith's counsel was quoted in a Dow-Jones news release to the effect that Zenith proposed to ask that the judgment run against Hazeltine Corporation (R.232).[2] After Zenith submitted a proposed form of judgment against Hazeltine Corporation as well as HRI, Hazeltine Corporation filed a special appearance opposing entry of judgment against it for want of jurisdiction (R.229, 2043).

The sole basis relied upon by the trial court to support the entry of judgment against Hazeltine Corporation was a procedural pretrial stipulation entered into by Zenith and HRI before the counterclaim was filed (R.2043, Z. 662-63, 666). That stipulation was between "the parties to this action," HRI and Zenith (R.43, 1, 4, 48). It provided that:

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2. No move was made by Zenith to bring Hazeltine Corporation into the case until Zenith ascertained that the trial judge had adopted the findings submitted by Zenith calling for a treble-damage judgment of $48,866,811 (R.128, 113, 122-23), approximately 15 times the net book value ($3,184,419) of HRI, the only counterdefendant (R.221).

> "4. *Plaintiff agrees* that for purposes of this litigation Plaintiff and its parent Hazeltine Corporation will be considered to be one and the same company" (R.43).

The stipulation was drafted by Zenith's counsel and was signed by an attorney for Zenith and by "counsel for plaintiff," HRI (R.1, 45, 236).

The Court of Appeals correctly held that the stipulation relied upon by Zenith and the District Court was entered into only by the "parties" to the counterclaim and that Hazeltine Corporation was *not* a party (Op. Pet. 65). Since there was no showing that Hazeltine Corporation authorized HRI's attorney to act on its behalf and since there was no showing that Hazeltine Corporation exercised such control of HRI to render it Hazeltine Corporation's agent, or that HRI and Hazeltine Corporation are the same entity, the Court of Appeals held that the judgments against Hazeltine Corporation were void and must be vacated (Op. Pet. 65).

ARGUMENT

SINCE THE COURT OF APPEALS CORRECTLY APPLIED WELL-SETTLED LEGAL PRINCIPLES, THERE IS NO REASON FOR THIS COURT TO REVIEW THE DETERMINATION THAT THE JUDGMENTS AGAINST HAZELTINE CORPORATION MUST BE VACATED.

Zenith's petition asserts that the Court of Appeals in its opinion "sets up as new law for the Seventh Circuit an unprecedented constitutional doctrine employing the corporate fiction not for the promotion of justice but to shield Hazeltine Corporation from all liability for its illegal conduct" (Pet. 24). On the contrary, the Court of Appeals established no new constitutional doctrine but instead relied

upon general principles long ago announced by this Court in *Pennoyer* v. *Neff*, 95 U.S. 714, 733 (1878); *D'Arcy* v. *Ketchum*, 11 How. (52 U.S.) 165, 174 (1850); *Hollingsworth* v. *Barbour*, 4 Peters (29 U.S.) 466 (1830), that judgment cannot be entered against one not served with process and never before the court. Thus, the entry of judgment against Hazeltine Corporation, which was never served with process and never before the court, was a denial of procedural due process under the Fifth Amendment. *Hansberry* v. *Lee*, 311 U.S. 32, 40-41 (1940); *Riley* v. *New York Trust Co.*, 315 U.S. 343, 353-54 (1942); *Estin* v. *Estin*, 334 U.S. 541, 548-49 (1948).[3]

The principal basis for Zenith's contention in this Court is the stipulation entered into between Zenith and HRI (Pet. 24-25). The simple answer to Zenith's contention is the stipulation itself, for it shows on its face that Hazeltine Corporation was not a party to it (R.43-45). The stipulation did not even purport to bind Hazeltine Corporation or make it a party to the case. Indeed, Zenith admits in its Petition here that the pretrial stipulation was "by the respondent Hazeltine Research, Inc." (Pet. 5).

The paragraph of the stipulation in question was drawn by Zenith's counsel (R.231, 233-34). Thus, Zenith can hardly contend that it was ambiguous or that it should be construed to mean anything other than its plain language. *Alcoa S.S. Co.* v. *United States*, 338 U.S. 421, 424-25 (1949).

It certainly raises no new constitutional issue or principle to hold, as the Court of Appeals held here, that a judgment cannot be entered against a corporation solely on the basis of a stipulation to which that corporation was

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3. Zenith thinks so little of its contention concerning jurisdiction over Hazeltine Corporation that it has not even bothered to argue the point in its "Reasons for Granting the Writ" (Pet. 27-34).

not a party and which on its face did not purport to bind that corporation.

Zenith attempts to attach some significance to the fact that the findings proposed by HRI at the conclusion of the first trial contained references to the stipulation and contained proposed findings which Zenith contends were "in favor of Hazeltine Corporation on practically every issue in the case" (Pet. 26). Since the effect of the stipulation was that HRI assumed responsibility for the acts of its parent, Hazeltine Corporation, and since under the counterclaim HRI was alleged to be a co-conspirator with Hazeltine Corporation, it was perfectly natural for HRI to seek findings that the patent pools and its parent's relation thereto did not constitute violations of the antitrust laws.

Zenith in its counterclaim clearly recognized the distinction between HRI, the party to the litigation, and HRI's parent, Hazeltine Corporation (R.48-53). The counterclaim expressly distinguished "Counterdefendant, Hazeltine Research, Inc., the party plaintiff in this suit" from "its parent, Hazeltine Corporation" (R.49), and in the prayer asked for a "judgment *against counterdefendant* for treble the amount of damages sustained" and did *not* ask for any judgment against Hazeltine Corporation (R.52).

The trial judge himself recognized that "Hazeltine Corporation wasn't a party to the lawsuit" (Z. 663).

Zenith never indicated, until after entry of the findings, that it construed the stipulation as making Hazeltine Corporation a party to the suit. On the contrary, in both its pretrial and post-trial briefs, Zenith specifically distinguished HRI, the party, from Hazeltine Corporation, the parent: "Plaintiff [HRI] . . . wholly owned by . . . Hazeltine Corporation" (Z. 140, 214); and recognized that counsel was representing only HRI by identifying "Mr. Dodds,

plaintiff's attorney and a director and officer of [*not* attorney for] Hazeltine Corporation" (Z. 170, 254).

There was no showing that HRI was the *alter ego* of Hazeltine Corporation, and Mr. Dodds, the attorney for HRI, neither purported to stipulate, nor is shown to have had the authority to stipulate, on behalf of Hazeltine Corporation.

After thorough consideration of the record, and in light of the applicable rulings of this Court, the Court of Appeals held that the purported judgments against Hazeltine Corporation violated due process of law, were void and thus had to be vacated (Op. Pet. 61-65). There is no reason for this Court to review that record again.

CONCLUSION

For all the reasons set forth above, the Petition for Certiorari should be denied.

Dated: May 9, 1968.

Respectfully submitted,

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